

1 Anchun Jean Su (DC Bar No. CA285167)
2 Howard M. Crystal (DC Bar No. 446189)
3 Center for Biological Diversity
4 1411 K Street NW, Suite 1300
5 Washington, DC 20005
6 Tel: (202) 849-8399
7 Emails: jsu@biologicaldiversity.org,
8 hcrystal@biologicaldiversity.org
9 *Admitted Pro Hac Vice*

7 Tala DiBenedetto (NY Bar No. 5836994)
8 P.O. Box 371
9 Oceanside, NY 11572-0371
10 Tel: (718) 874-6734, ext. 555
11 Email: tdibenedetto@biologicaldiversity.org
12 *Admitted Pro Hac Vice*

11 *Attorneys for Plaintiffs*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**
15 **TUCSON DIVISION**

16 Center for Biological Diversity; and
17 Conservation CATalyst,

18 *Plaintiffs,*

19 v.

20 Kristi Noem, in her official capacity
21 as Secretary of Homeland Security;
22 U.S. Department of Homeland
23 Security; and U.S. Customs and
24 Border Protection,

25 *Defendants.*

Case No. CV-00365-TUC-AMM (JEM)

**PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

1 In accordance with Federal Rule of Civil Procedure 56, LRCiv 56.1(a), Plaintiffs
2 hereby submit this statement of Undisputed Material Facts in support of their Motion for
3 Summary Judgment.

4 1. On January 20, 2025, President Donald Trump issued Proclamation No.
5 10886, entitled “Declaring a National Emergency at the Southern Border of the United
6 States.” 90 Fed. Reg. 8327 (Jan. 29, 2025), which directed the Secretary of Homeland
7 Security (“DHS Secretary”) to “immediately take all appropriate action, consistent with
8 law . . . to construct additional physical barriers along the southern border.” *Id.* Shortly
9 thereafter, President Trump also issued Executive Order No. 14165, entitled “Securing
10 Our Borders.” 90 Fed. Reg. 8467 (Jan. 30, 2025), which directed the DHS Secretary to
11 “take all appropriate action to deploy and construct” physical barriers along the U.S.-
12 Mexico border “to ensure [its] complete operational control.” *Id.*

13 2. On June 5, 2025, DHS Secretary Kristi Noem issued a determination in the
14 Federal Register, entitled “Determination Pursuant to Section 102 of the Illegal
15 Immigration Reform and Immigrant Responsibility Act of 1996, as Amended.” 90 Fed.
16 Reg. 23946 (June 5, 2025) (“the Waiver”). Declaration of A. Jean Su (“Su Decl.”), Ex. 1.
17 The Waiver waived the application of numerous laws otherwise applicable to two
18 segments within the U.S. Border Patrol Tucson Sector along the U.S.-Mexico border: first,
19 from “approximately one (1.0) mile west of Border Monument 121 and extending east
20 along the border to Border Monument 117,” and second, from “Border Monument 99 and
21 extending west along the border for approximately thirty-three and four tenths (33.4)
22 miles” (“the Project”). *Id.*

23 3. The two Project segments amount to 41 miles along the Arizona-Mexico
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1 border. If completed, the Project will create Arizona's longest unbroken stretch of border
2 wall amounting to 100 miles. Su Decl., Ex. 2.

3 4. The Waiver waived "in their entirety" the following 34 statutes that would
4 have otherwise applied to the Project, as well as "all federal, state, or other laws,
5 regulations, and legal requirements of, deriving from, or related to the subject of" these
6 statutes:
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- 8 i. National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.*;
- 9 ii. Endangered Species Act, 16 U.S.C. 1531 *et seq.*;
- 10 iii. Clean Water Act, 33 U.S.C. § 1251 *et seq.*;
- 11 iv. National Historic Preservation Act, Pub. L. 89-665;
- 12 v. Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*;
- 13 vi. Migratory Bird Conservation Act, 16 U.S.C. § 715 *et seq.*;
- 14 vii. Clean Air Act, 42 U.S.C. § 7401 *et seq.*;
- 15 viii. Archaeological Resources Protection Act, 16 U.S.C. § 470aa *et seq.*;
- 16 ix. Paleontological Resources Preservation Act, 16 U.S.C. § 470aaa *et seq.*;
- 17 x. Federal Cave Resources Protection Act of 1988, 16 U.S.C. § 4301 *et*
18 *seq.*;
- 19 xi. National Trails System Act, 16 U.S.C. § 1241 *et seq.*;
- 20 xii. Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*;
- 21 xiii. Noise Control Act, 42 U.S.C. § 4901 *et seq.*;
- 22 xiv. Solid Waste Disposal Act, as amended by the Resource Conservation
23 and Recovery Act, 42 U.S.C. § 6901 *et seq.*,
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- xv. Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*;
- xvi. Archaeological and Historic Preservation Act, 54 U.S.C. § 320301 *et seq.*;
- xvii. Antiquities Act, 54 U.S.C. § 320301 *et seq.*;
- xviii. Historic Sites, Buildings, and Antiquities Act, 54 U.S.C. § 3201-320303 & 320101-320106;
- xix. Eagle Protection Act, 16 U.S.C. § 668 *et seq.*;
- xx. Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.*;
- xxi. Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*;
- xxii. Section 438 of the Energy Independence and Security Act, 42 U.S.C. § 17094;
- xxiii. National Fish and Wildlife Act of 1956, 16 U.S.C. § 742a *et seq.*;
- xxiv. Fish and Wildlife Coordination Act, 16 U.S.C. § 661 *et seq.*;
- xxv. Wild and Scenic Rivers Act, 16 U.S.C. § 1281 *et seq.*;
- xxvi. Farmland Protection Policy Act, 7 U.S.C. § 4201 *et seq.*;
- xxvii. Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*;
- xxviii. National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. § 668dd-668ee);
- xxix. Wild Horse and Burro Act, 16 U.S.C. § 1331 *et seq.*);
- xxx. National Park Service Organic Act and National Park Service General Authorities Act, 54 U.S.C. § 100101-100102, 100301-100303, 100501-

100507, 100701-100707, 100721-100725, 100751-100755, 100901-
100906, 102101-102102;

xxxi. 16 U.S.C. § 450y, as amended;

xxxii. 67 Stat. c18 (Nov. 5, 1952);

xxxiii. National Forest Management Act of 1976, 16 U.S.C. § 1600 *et seq.*; and

xxxiv. Multiple Use and Sustained Yield Act of 1960, 16 U.S.C. § 528-531.

90 Fed. Reg. 23946, 23947 (June 5, 2025). Su Decl., Ex. 1.

5. The Project involves the construction of approximately 27 miles of new border barrier in Cochise and Santa Cruz Counties, Arizona. The planned construction is divided into three segments: (i) replacement of 24.7 miles of vehicle barrier with new border barrier south of Sonoita, in Santa Cruz and Cochise Counties, Arizona; (ii) construction and maintenance of 2.1 miles of new border primarily along the Coronado National Memorial in Cochise County, Arizona; and (iii) replacement of 0.2 miles of vehicle barrier with new border barrier that will cross the Santa Cruz River in Santa Cruz County, Arizona. The U.S. Customs and Border Protection (“CBP”) describes the new border barrier as “30-foot high barriers made of six-inch squared steel bollards, spaced approximately four inches apart.” Other components of the proposed Project include: access roads, drainage gates which are manually operated flood gates ranging from 8- to 10-feet in width, water usage anticipated to be needed for construction and dust suppression, and 24-foot-wide patrol and 12-foot-wide maintenance roads. U.S. Customs and Border Protection, “Border Barrier Construction – Santa Cruz and Cochise Counties, Arizona – June 2025,” June 13, 2025, [https://www.cbp.gov/document/ environmental-](https://www.cbp.gov/document/environmental-)

1 [assessments/border-barrier-construction-santa-cruz-and-cochise-counties](#); U.S. Customs
 2 and Border Protection, “Border Barrier Construction in Cochise and Santa Cruz Counties,
 3 Arizona Request for Input,” (June 5, 2025), [https://www.cbp.gov/sites/
 4 default/files/202506/Cochise%20and%20Santa%20Cruz%20Counties%20Border%20
 5 Barrier%20Construction%20Request%20for%20Input%2006.05.2025.pdf](https://www.cbp.gov/sites/default/files/202506/Cochise%20and%20Santa%20Cruz%20Counties%20Border%20Barrier%20Construction%20Request%20for%20Input%2006.05.2025.pdf) (Su Decl.,
 6 Ex. 3).

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 8 6. CBP has awarded a contract to construct the Project’s 27 miles of border
 9 wall in Arizona to Fisher Sand & Gravel Co. for \$309 million, equating to a price tag of
 10 \$11 million per mile of border wall, with funding deriving from CBP’s Fiscal Year 2021
 11 funds. U.S. Customs and Border Protection, “Press Release: DHS awards contract for 27
 12 miles of new border wall in Arizona; issues waiver to accelerate construction in Texas,”
 13 June 18, 2025, [https://www.cbp.gov/newsroom/national-media-release/dhs-awards-
 14 contract-27-miles-new-border-wall-arizona-issues-waiver](https://www.cbp.gov/newsroom/national-media-release/dhs-awards-contract-27-miles-new-border-wall-arizona-issues-waiver). CBP informed the public that
 15 it would start construction within sixty days of June 30, 2025. Emily Bregel, *Border wall
 16 expanding across Arizona’s scenic grasslands*, Arizona Daily Star,
 17 [https://tucson.com/news/local/subscriber/article_be5dfd20-cd74-4fce-b0a3-
 18 7850a4c1ac25.html](https://tucson.com/news/local/subscriber/article_be5dfd20-cd74-4fce-b0a3-7850a4c1ac25.html).
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22 7. The Project is planned to bisect the San Rafael Valley and greater Sky
 23 Islands region. This area is one of the last, and is the largest, remaining unwallled sections
 24 of the border in the Sky Island region. Declaration of Eamon J. Harrity (“Harrity Decl.”),
 25 ¶ 9. In Arizona, the Sky Island region encompasses the entire southeast corner of the state,
 26 including the San Rafael Vally, which sits along the Arizona-Mexico border between the
 27 Patagonia Mountains to the west and Huachuca Mountains to the east. Harrity Decl., ¶ 2.
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1 This region is recognized as a global biodiversity hotspot and provides important habitat
2 for plants and wildlife along the U.S.-Mexico borderlands. Harrity Decl., ¶ 3. It serves as
3 a critical migratory corridor for jaguars, ocelots, and other endangered neotropical
4 mammals to recolonize their historic territories in the United States. Declaration of Aletris
5 M. Neils (“Neils Decl.”), ¶ 10. The Arizona Border Wall Project poses threats to these
6 species, as well as black bears, pronghorn, collared peccary, coyote, mule deer, white-
7 tailed deer, wild turkey, mountain lions, and many others through limitations on
8 movement, habitat fragmentation, and other cascading effects to the ecosystem. Harrity
9 Dec., ¶ 16.

12 8. Jaguars (*Panthera onca*) are large, federally endangered carnivorous felids
13 that historically inhabited the American Southwest. Neils Decl., ¶ 12; 62 Fed. Reg. 39147
14 (Jul. 22, 1997). Jaguars that have inhabited the southwestern United States in recent
15 history have been males who rely on transboundary movement between the U.S. and
16 Mexico to breed with females in Mexico and disperse into Arizona in search of unoccupied
17 territories with prey, water, and shelter. Neils Decl., ¶ 18.

19 9. Studies show that steel bollard walls function as near-total barriers to many
20 terrestrial wildlife species and strong impediments to many others. Harrity Decl., ¶ 8;
21 Neils Decl., ¶ 19. The proposed border wall will sever movement corridors, isolate
22 populations, and potentially alter the genetic composition of several species in the Sky
23 Island region. Harrity Decl., ¶ 9.

26 10. While jaguars and other wildlife are generally able to move through existing
27 vehicle barriers, replacement of these barriers with impenetrable wall would render areas
28 that jaguars can currently cross impassable. Neils Decl., ¶¶ 17, 20. With only two known

1 individuals in the U.S., and no breeding females, construction of impassible border wall
2 that would cut off the most critical remaining corridors for jaguars between Mexico and
3 the U.S. could lead to the extirpation of jaguars in the United States. Neils Decl., ¶¶ 17,
4 22, 26–27. The proposed border wall will impede one of the last remaining corridors for
5 federally-endangered ocelots (*Leopardus pardalis*) between the U.S. and Mexico,
6 inhibiting their recovery in the United States. Neils Decl., ¶¶ 10, 17, 20; Harrity Decl., ¶
7 13; 47 Fed. Reg. 31670 (July 21, 1982).

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10 11. In addition to negative impacts from habitat destruction, fragmentation, and
11 limitations on movement, increased anthropogenic disturbance associated with
12 construction, maintenance, and increased human use and vehicle activity will have
13 negative impacts on wildlife and the surrounding environment in the form of increased
14 anthropogenic noise, artificial light, road construction, and damage to watersheds. Harrity
15 Decl., ¶ 17.

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17 12. As IIRIRA§ 102(a) permits DHS to build within the “vicinity” of U.S.
18 borders, Department of Justice regulations have granted CBP the authority to operate
19 anywhere within 100 miles of all U.S. borders—where nearly two out of three people in
20 this country reside. American Civil Liberties Union, et al., *Death, Damage, and Failure:*
21 *Past, Present and Future Impacts of Walls on the U.S.-Mexico Border* (2018), 8-9,
22 https://www.aclu.org/sites/default/files/field_document/aclu-report-updates_0.pdf (citing
23 Department of Justice, “Guidance for Federal Law Enforcement Agencies, Regarding the
24 Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender
25 Identity” (Dec. 2014)).
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28 13. Nearly 100 endangered and threatened species have been and will be

1 impacted by the construction of roads and walls at the 2,000 mile U.S.-Mexico border,
 2 which blocks movement of wildlife species, precluding genetic exchange, population
 3 rescue, and movement of species in response to climate change. Center for Biological
 4 Diversity, Destruction of a Jaguar Corridor (July 2025),
 5 [https://biologicaldiversity.org/species/mammals/jaguar/pdfs/Destruction_of_a_Jaguar_C](https://biologicaldiversity.org/species/mammals/jaguar/pdfs/Destruction_of_a_Jaguar_Corridor_Report_July_2025_Center.pdf)
 6 [orridor_Report_July_2025_Center.pdf](https://biologicaldiversity.org/species/mammals/jaguar/pdfs/Destruction_of_a_Jaguar_Corridor_Report_July_2025_Center.pdf); Center for Biological Diversity, *A Wall in the*
 7 *Wild* (May 2017), [https://www.biologicaldiversity.org/programs/international/](https://www.biologicaldiversity.org/programs/international/borderlands_and_boundary_waters/pdfs/A_Wall_in_the_Wild.pdf)
 8 [borderlands_and_boundary_waters/pdfs/A_Wall_in_the_Wild.pdf](https://www.biologicaldiversity.org/programs/international/borderlands_and_boundary_waters/pdfs/A_Wall_in_the_Wild.pdf).

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 11 14. Approximately 39 waivers made pursuant to IIRIRA § 102(c) have been
 12 issued since 2005. It is estimated that the waivers apply to nearly 930 miles of the U.S.-
 13 Mexico border and implicate nearly 50 different federal laws and innumerable state, local
 14 and Tribal laws deriving therefrom. Kenneth D. Madsen, Ohio State University, “DHS
 15 Sec. 102(c) Border Barrier Waivers,” updated July 5, 2025,
 16 <https://u.osu.edu/madsen.34/dhs-waivers/>.

18 Dated: July 16, 2025

Respectfully submitted,

20 /s/ Anchun Jean Su

21 Anchun Jean Su (DC Bar No. CA285167)
 22 Howard M. Crystal (DC Bar No. 446189)
 23 Center for Biological Diversity
 1411 K Street NW, Suite 1300
 24 Washington, DC 20005
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Admitted Pro Hac Vice

Attorneys for Plaintiffs

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